

HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R.No.6498 of 2006

Date of decision : 8.5.2007

Virender Singh Saini and another

.....Petitioners

versus

Vivek Sharma and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present: Sh.Sachin Mittal, Advocate for the petitioners.

Sh.Naveen Kaushik, Advocate for respondent Nos.1 & 2

Sh.Vivek Singal, Advocate for respondent No.3.

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ORDER

HEMANT GUPTA, J.

The challenge in the present revision petition is to the order dated 25.10.2006, passed by the learned Motor Accident Claims Tribunal whereby an application for restoration of the claim application dismissed in default, was dismissed.

The petitioner who is injured in a motor vehicle accident filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 for compensation. The said case was dismissed for want of prosecution on 7.8.2006. An application for restoration of the petition was filed on 14.8.2006. It is the case of the petitioner that the counsel for the petitioner has noted the date wrongly as 10.8.2006 and, therefore, he could not appear on the date so fixed. The said application was dismissed in default on 26.9.2006. Another application was filed by the petitioner on 10.10.2006 to restore the application for restoration of the claim application. The said application was dismissed by the learned Tribunal

on 25.10.2006 on the ground that indulgence cannot be granted to a party who continues to commit defaults. Though the first default can be condoned liberally, but the second default cannot be condoned so liberally.

The claimant is an injured in accident. He has engaged a lawyer. Therefore, the consequence of absence of the counsel cannot be passed on the petitioner who is injured in accident. May be, the counsel was careless in prosecuting the case, but it cannot be said that the applicant is at fault in any manner. It is not the case of the respondent that the case was fixed for evidence of the petitioner and he failed to appear on the date fixed. The presence of the petitioner was not required on the date fixed. Still further, the applications have been filed soon after the orders of dismissal were passed. It is, thus, apparent that the reasons of absence were lacking in bonafides in any manner. Therefore, the orders passed by the learned Tribunal dated 7.8.2006, 26.9.2006 and 25.10.2006 have caused failure of justice.

Consequently, the present revision petition is allowed. The orders dated 7.8.2006, 29.6.2006 and 25.10.2006, passed by the learned Motor Accident Claims Tribunal are set-aside. The claim petition is restored to its original number.

Parties through their counsel are directed to appear before the learned Tribunal on 5.6.2007 for further proceedings in accordance with law.

08-05-2007

*mohinder

(HEMANT GUPTA)
JUDGE

